

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

**ORDER**

01 CR 1064 (RJD)

FRANKLIN BONIFACIO,

Defendant.

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DEARIE, Chief Judge.

Defendant Franklin Bonifacio moves for a sentence modification pursuant to 18 U.S.C. § 3582(c)(2). For the reasons stated herein the motion is denied.

On June 17, 2002, defendant pled guilty to a one-count superseding information which charged that between February 22, 2001 and August 29, 2001, Bonifacio possessed with intent to distribute 50 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(iii). On January 8, 2003, this Court sentenced defendant to the mandatory minimum term of imprisonment of 120 months.

Defendant contends that he is eligible for re-sentencing under the retroactive application of the United States Sentencing Commission's recent amendment to the crack cocaine sentencing guidelines. See 72 Fed.Reg. 28571-72 (2007). However, because the defendant was sentenced to the statutory mandatory minimum term of incarceration, he does not qualify for relief under § 3582(c)(2). See Unites States v. Ortiz, 2008 WL 709488 (S.D.N.Y. March 17, 2008); United States v. Howell, 2008 WL 687112 (S.D.W.Va. March 12, 2008); United States v. Quarles, 2008 WL 161686 (D. Kansas Jan. 16, 2008).

SO ORDERED.

Dated: Brooklyn, New York  
March 11, 2009

s/ Judge Raymond J. Dearie

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RAYMOND J. DEARIE  
United States District Judge